

LEGAL ENGLISH

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(SEBELUM UTS)

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JURISPRUDENCE (dasar-dasar ilmu hukum)

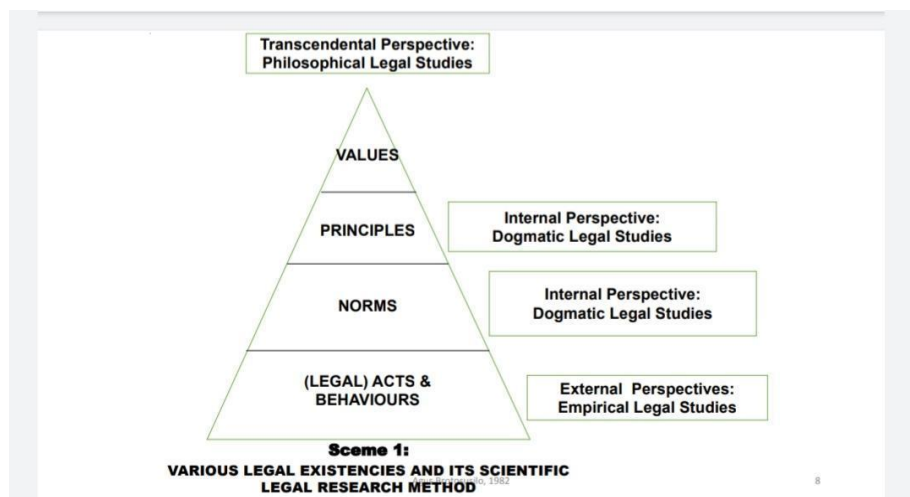
The main characteristics of legal research/writing

1. To explain (clarify) **how the law applies** in certain circumstances.
2. Legal research and writing is a **problem solving activity** by presenting **facts**, linked to relevant **legal norms**, then draw **conclusions** based on the things that have been stated. ("FIRAC")
3. Legal discipline is a **prescriptive discipline**, not just an empirical analytical discipline.
What is the difference between prescriptive discipline and analytical discipline?
Prescriptive discipline → discipline is a teaching system that provides guidelines on **what ought to be done** in dealing with certain symptoms in reality; **the results** of these are in the form of a **prescription**.
Example: law, philosophy
Analytical discipline → discipline analyses, understands and explains the realities faced; **the results** of the studies are in the form of **description**.
4. **Main concepts in law** must be clearly shown, including:
 - Legal persons;
 - Roles in law;
 - Legal events;
 - Legal relationships;
 - Legal objects; and
 - Legal society.

Various Legal Existences

Law exists in various forms:

1. The most **abstract** form → **values**
Ex: certainty, equity
2. A more **concrete** form → **principles** → then, **norms**.
Ex: pacta sunt servanda (principle), western land sales norm (norm)
3. The **most concrete** form of law → **(legal) acts**
Ex: legal sales in adat law



3 Legal Perspectives

1. **Internal perspective** (dogmatic legal science)
2. **External perspective** (sociology of law) → examines existing systems of law, including state and development, etc. to understand the existence, position, and role of law in it → analytical
3. **Transcendental** (philosophy of law) → to search for an ultimate justification law on basis of moral, and to question
 - Normative analysis, critical and constructive study of the nature of law and the legal system
 - objective

Methodology in Legal Research

1. **Internal perspective of mono-disciplinary legal research**
 - To deepen understanding of legal discipline
 - Uses clearly defined terminologies
 - Relevantly theoretical foundations
 - Appropriately legal methodologies to contribute to the internal consistency of law
2. **Inter-disciplinary legal research**
 - Using relevant legal theoretical basis and its appropriately legal methodology by utilizing the results of the study of other (non-legal) disciplines.
3. **The internal perspective of inter-disciplinary legal research: socio-legal studies**
 - Uses carefully determined relevant legal theoretical basis and methodology by utilizing the results of studies of non-legal disciplines (Sociology, Antropology) as a data collection and processing tool.
4. **External perspectives of inter-disciplinary legal research**
 - Using carefully determined theoretical foundations and methodology of the social sciences which are deemed relevant examining the existence of law and action.

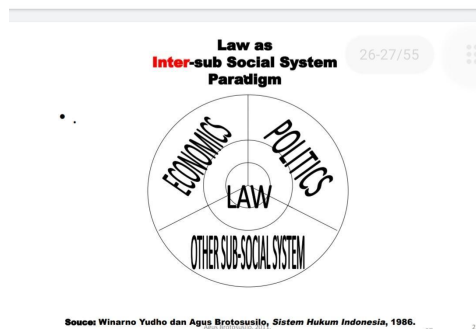
- To obtain a truer and deeper understanding of the existence and the function of law in social system

5. Multi-disciplinary study in legal discipline

- If the three studies (philosophy of law, legal sciences, and legal politic) are carried out simultaneously using the theoretical basis and methodology of each discipline, this joint activity can be called multi-disciplinary study

Law as an Inter-sub Social System

Winarno Yudho and **Agus Brotosusilo** advocate that the role of law actually is a factor that integrated all of the social sub-systems; so, the law is an inter-sub social system.



The differences between RECHSTAAT and RULE OF LAW

RECHTSTAAT	RULE OF LAW (dalam anglo saxon)
<i>Distinctions between law for the public such as penal code, civil law, and procedural law, and the law for the administrators</i>	<i>There are no such distinctions as the rule of law tradition holds the principle of equality before the law</i>

JUDGES HAVE A MORE ACTIVE ROLE IN RECHTSTAAT

The development of canonic law in the European Continent in the 12th century required that law can only be interpreted and implemented by jurists, not the public. As a result, the **judges have a more active role** than their counterparts from the anglo saxon.

The similarities between RECHSTAAT and RULE OF LAW

Both rest on liberal individual principles.

Indonesia legal system

Indonesias' Hierarchy of Law:

1. 1945- Constitution (UUD 1945)
2. People's Consultative Assembly Decision (Ketetapan Majelis Permusyawaratan Rakyat)
3. Statute/Legislation: produced by the national legislature, the DPR (Undang-Undang)

4. Interim Emergency Law: literally government regulation in lieu of law (Peraturan Pengganti Undang-Undang)
5. Government Regulation (Peraturan Pemerintah)
6. Presidential Regulation (Peraturan Presiden)
7. Provincial Regulations (Perda Provinsi)
8. County/City Regulation (Perda Kab./Kota)

Pancasila

- The main purpose of law is to *establish a harmonious relationship in society*.
- Pancasila as a source of Indonesian law consists of a system of harmonious antinom components that are able to establish as well as maintain a harmonious relationship in society.
- **Soedminan Karohadiprodjo**: “Adat Law is a manifestation of the contents of the soil of the Indonesian nation from generation to generation. The idea “behind” adat law is compatible with the substance of Pancasila values. Therefore, Pancasila values are the foundation of Adat Law’s ideas”

What is ADAT LAW?

- According to Prof. Amura, the term of “Adat” is from **Sanskrit** term **A and dato**. **A** means not and **dato** means something material
- Adat has been used by the Minangkabau people approximately 2000 years ago

Value System In Adat Law

- **Soepomo**: “Adat law exist in the legal culture which is more appreciated communalism than individualism values”
- **Selo Soemardjan**: “The customary law is more attached to romaticsm that rationalism values”
- **Sir Thomas Raffles**: “more adheres to spiritualism than materialism values”

Pancasila: A Source of Harmony

1st principle “Belief in the one and only god”

→ harmony relation between the creator the creations

→ Antinomous values => (divine-wordly) (sacredly-profanelly)

2nd principle: “Just and Civilized Humanity”

→ a harmony in interpersonal relationships, inter-group relationships, and relationships between the individual and the group

→ Antinomous values => individualism and communalism

3rd Principle: “The unity of Indonesia”

→ A harmony between diversity and unity

→ Antinomous values => (Unity - Diversity), (Uniformity - Pluralism)

4th Principle: “Democracy guided by the inner wisdom in the unanimity arising out deliberations amongst representatives”

→ A harmony in vertical and horizontal

5 th principle: “Social justice for all of the people of Indonesia”

→ A harmony between physical (clothing, food, shelter, health, and others), and spiritual (natural level and cultural level) realm in society

→ Antinomous => physically - spiritually

Critics on Pancasila

Simon Butt and Tim Lindsey: “In particular Pancasila appears to be inherently unsuitable as a basis for law. It is a particularly vague set of precepts, with wording ‘long on rhetoric and sentiment, but short on specific prescription’... At worst it might be argued that Pancasila’s principles contradict each other.”

But actually, Pancasila is a tool for integration

- **Mirjam Künkler and Hanna Lerner:** *“Pancasila provides the state the justification to intervene in spiritual activity of the citizens which doesn’t happen in liberal tradition such as Israel, while the religious community at the same time could undermine the state power. On the other hand Pancasila had brought the country not to be religion based state, which means the state could avoid to create second class citizen based on its citizen identity, especially religion.”*
- **Edward Aspinall, How Indonesia Survived:** Comparative Perspectives on State Disintegration and Democratic Integration. Editor: Mirjam Kunkler dan Alfred Stepan dalam Democratization and Islam in Indonesia (New York: Columbia University Press, 2013), 321.
“Aspinall explains about How Indonesia survives from disintegration.”
- **Seung-Won Song,** disertasi doktoral, Back To Basics In Indonesia? □ Reassessing The Pancasila And Pancasila State And Society, 1945-2007 (Ann Arbor: Ohio University, 2007):
“Indonesia’s commitment to Pancasila brings the nation together.”
- **Pak Kris** dissertation shows: Pancasila which clearly combines with Sasangka Jati would answer Habermas’ problem of secular system (The need for Public Theology).

The Difference of Modern European and Javanese on Concept of Power

Modern European	Javanese
Modern European Concept of Power (Benedict Anderson)	Javanese (Indonesian) Concept of Power

Power is abstract: power is to describe relationship or relationships. The source of Power are heterogenous The accumulation of power has no inherent limits. Power is morally ambiguous	Power is concrete. Power is that intangible, mysterious and divine energy which animates the universe. It is not a theoretical postulate but an existential reality. Power is homogeneous. The quantum of power in the universe is constant Power doesn't raise the question of legitimacy: since all power derives from a single homogeneous source, power itself antecedes questions of good and evil. To the Javanese way of thinking it would be meaningless to claim the right to rule on the basis of differential sources of power. Power is neither legitimate nor illegitimate. Power is.
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LAW AND SOCIETY (hukum dan masyarakat)

1. Law in the Books

Merupakan peraturan normatif.

→ Berupa teks

→ Contoh: Peraturan Perundang-Undangan, KUHP, KUHPer, dll

2. Law in Action

Proses translasi hukum.

→ Contoh: ada hakim yang membuat keputusan berbeda dari peraturan perundang-undangan

3. Law in Society

Bagaimana hukum di masyarakat, pola-pola perilaku.

→ Contoh: harus menggunakan helm di Jalan Sudirman

Contoh dari objek penelitian law and society

Child Marriage atau perkawinan anak merupakan bagaimana UU perkawinan dan perlindungan anak bekerja di masyarakat. Masyarakat memutuskan untuk mengawini anaknya adalah dengan berbagai alasan dan salah satu faktor yang paling umum adalah faktor ekonomi.

Relations between law and the society:

1. Law in the Books

→ Example: UU Perkawinan, Perlindungan Anak

2. Law in Society

→ Example: perbedaan logika masyarakat dan logika pemerintah dalam menyikapi perkawinan anak (Adat istiadat)

3. Law in Action

4. Law in action and society

→ Example: pola-pola perilaku

What is law?

“The Living Law” (Eugen Ehrlich, 1975)

- “*We find law through direct observations or concrete usages*” (bisa dari behaviours)
- “*The law which dominates life itself even though it has not been poised in legal prepositions.*”

Living Law

Law abstracted from patterns of behavior

Example: masyarakat hukum adat, ormas agama.

“The Binding Rules” (Bronisław Malinowski, 1926)

Legal rules consist of a class of binding rules that:

- *Control the most aspects of tribal life*

- *Regulate personal relations between kinsman, clansmen, and tribesmen*
- *Settle economic relations*
- *Regulate the status of husband and wife of their respective families*

→ emphasized that law can be found in actual usages

Istilah umum dalam social legal studies

1. State law model

- model of rules and institutions
- positive norms and laws are made by state or legislators.

2. Legal pluralism

- Semua hukum setara (coexisting). Terdiri dari state law, adat law, religious law, and customary law.

3. Legal centralism

- Adanya tingkatan kekuatan (hirarki) hukum antara 1. State law; 2. Religious law; 3. Adat law

4. Semi autonomous social field

- Bagaimana sebuah komunitas mampu membuat aturan main mereka sendiri yang tidak sesuai hukum negara. Mengapa disebut semi autonomous? Karena mereka tidak sepenuhnya memiliki otonomi; mereka berada di bawah negara, namun dia buat aturan main tersendiri.
- Contoh: Adanya penjara yang bagus bagi yang punya uang, preman pasar minta uang ke pedagang pasar dengan “tujuan” menjaga keamanan (aka gak diganggu mereka aka gak dipalak preman).

5. Vernacularisation

- Bagaimana ide-ide yang ada di ranah global menjadi lokal.
- Contoh: Declaration of human rights melegalkan HAM, women rights yang kemudian diterapkan menjadi peraturan daerah

CIVIL LAW (hukum perdata)

Systematics of Civil Law

Doctrine	Civil Code
Law on person (<i>personenrecht</i>) → hukum orang	Book I = on person (and family) → tentang Orang
Law on family (<i>familierecht</i>) → hukum keluarga	Book II = on property → tentang Kebendaan
Law on property (<i>vermogensrecht</i>) → kekayaan/harta	Book III = on obligations* → tentang Perikatan
Law on inheritance (<i>erfrecht</i>) → waris	Book IV = on evidence and statute of limitations → tentang Pembuktian dan Daluwarsa

*(kenapa tidak menggunakan istilah “contract”? Karena dalam istilah kontrak ada dua makna yang berbeda, yakni contract dalam arti perjanjian dan contract dalam arti UU)

Validity of Contract

1. **Consent by freewill** without duress (paksaan), deceit (penipuan), mistake (kekhilafan)
2. **Capacity** (kecakapan) → contractual age or age of majority → berwenang atau tidak dalam berhukum = kedewasaan
3. **Specific object/Certainty of terms** (suatu hal tertentu) → merupakan hal (barang) yang tradable (dapat diperdagangkan) and can be specified (dapat dispesifikasi) = jelas hak dan kewajiban pembeli
4. **Lawful purpose** (sebab yang halal) → must not contravene laws or public decency (tidak melanggar hukum yang ada) and norms (tidak melanggar norma)

*Nomor 1 dan 2 merupakan syarat subjective

**Nomor 3 dan 4 merupakan syarat objective

Common terms

1. ***Freedom of contract principle*** (asas kebebasan berkontrak)

→ called as Pacta Sunt Servanda

2. ***Waiver of certain articles in the civil code*** (pengesampingan pasal-pasal dalam KUHPerdata)

→ Waiver of articles 1266 and 1267 of the civil code (tentang pembatalan perjanjian)

Ex. Article 1266

A void condition is deemed to have been included in reciprocal agreements, in case a party does not fulfill his obligation. In such case, the agreement is not void by law, but voidance must be requested to the Court.

Ex. Article 1267

The party against whom the obligation is not fulfilled may opt to compel the counterparty to fulfill the agreement where such fulfillment is still possible, or demand the termination of such agreement, with compensation of costs, damages and interests.

Pengesampingan **Pasal 1266** dan **Pasal 1267** adalah supaya dalam hal terjadinya wanprestasi atau tidak terpenuhinya isi perjanjian oleh salah satu pihak, maka:

- a. Pembatalan suatu perjanjian tidak perlu melalui proses permohonan batal ke pengadilan melainkan dapat berdasarkan kesepakatan para pihak itu sendiri (Pasal 1266).
- b. Pihak yang tidak dipenuhi perikatannya dapat memaksa pihak yang lain untuk memenuhi isi perjanjian atau menuntut pembatalan perjanjian tersebut ke pengadilan dengan membebankan penggantian biaya, kerugian dan bunga (Pasal 1267).

3. ***Privity of contract*** (asas terjemahan dari individualisme yang ada di dalam kontrak)

→ kontrak hanya berlaku bagi pihak yang terikat di dalamnya

4. ***Intention of the parties*** (maksud dari para pihak)

5. ***Perjanjian***

- a. Offer (penawaran)
- b. Acceptance (penerimaan)

6. ***Consideration*** (timbal balik)

→ timbal balik, apa yang diberikan oleh suatu pihak kepada pihak lainnya juga diberikan kepada pihak tersebut.

→ misal: A → B, B → A

7. **Force Majeure** (keadaan memaksa)
 - keadaan yang ada di luar dugaan atau kehendak = “act of god”
 - istilah ini biasa digunakan saat bencana alam (Act of god)
8. **Breach of contract/default** (wanprestasi/ melanggar perjanjian)
 - ketiadaan sesuatu yang seharusnya dilakukan
 - pelanggaran

General Terminologies

1. **Advice and Advise**
 - Advice: An opinion or recommendation offered as a guide to action
 - Advise: to recommend
2. **Affect and Effect**
 - Affect is a verb that most commonly means “to influence”
 - Effect (as an verb) means to “bring about” or “cause”
 - Effect (as a noun) means “result” or “consequence”
3. **Attorney and Lawyer**
 - pengacara
 - The terms “lawyer” and “attorney” have one crucial difference: While **anyone who graduates from law school is a lawyer**, that doesn’t automatically mean the same thing as becoming an **attorney under US law**. In other words, **while all attorneys are lawyers, not all lawyers are attorneys**.
4. **Comprise and Compose**
 - Comprise means “consist of”
 - Compose means “to create or put together”
5. **Fewer and Less**
 - Use **fewer when referring to individual or countable things** {fewer than ten chairs} {fewer questions asked by judges}. Use **less when referring to volume, quantity, or degree** {less influence on the jurors}, **mass or bulk nouns** {less water in the glass}, or **units of measure or time** {less than three ounces} {less than five months}.
6. **Principal and Principle**
 - principal (as an adjective) means “main” or “primary,”
 - principal** can be a noun or an adjective, **principle** is a noun. When used as an adjective, principal means “main” or “primary,” On the other hand, **principle** is a noun that means a rule, tenet, or basic truth, such as the principle of gravity. Use **principle**, a noun, or when you mean a rule or doctrine.

- The principal of the high school led the students in singing the national anthem. (principal as a noun meaning the main or head person)
- The principal issue in this case is whether the defendant waived his right to trial by jury. (principal as an adjective meaning main or primary)
- Freedom and justice are the principles upon which our country was founded. (principle meaning rule, tenet or basic truth)

Other legalese in Private Law

Assent (agreement)

Duress (paksaan)

Verdict (utusan)

Estoppels → prinsip hukum kalau sudah ada fakta yang mengatakan sebaliknya orang itu tidak bisa klaim yang menegasikan fakta

Misal: ada seseorang yang ingin mengklaim bahwa dia bukan pembunuh, tapi gak bisa, karena di keputusan hakim beberapa waktu sebelumnya sudah mengatakan bahwa dia telah membunuh seseorang.

Negligently (derajat kesalahan orang)

INTERNATIONAL LAW (hukum internasional)

Apa itu hukum internasional?

Perjanjian internasional dibuat oleh *negara sebagai penguasa atas warga negara* kemudian membuat perjanjian dengan negara lain.

Public International Law

- Body of *principles, customs, and rules* recognized as effectively binding obligations by sovereign in their mutual relations.
- Dibuat oleh negara sebagai penguasa. Alhasil, hasil perjanjiannya memiliki konsekuensi terhadap warga negaranya.
- **Contoh:** perjanjian pembebasan visa di negara ASEAN berpengaruh pada warga negaranya

Private International Law

- Is the body of *conventions, model laws, national laws, legal guides*, and other documents and instruments that regulate private relationships across national borders
- **Contoh:** Indonesia membeli pesawat dari luar negeri untuk presiden, lalu mereka membuat perjanjian kontrak. Oleh karena itu, perbuatan hukum tersebut menggunakan Private International Law karena terdapat perbedaan sistem hukum.
- Private International Law mengatur perihal jual beli, sewa menyewa, pinjam meminjam, dan sebagainya.

Walaupun begitu, terdapat sesuatu keadaan dimana hukum publik internasional bernuansa seperti perdata. Contohnya adalah utang negara ketika Indonesia mengutang ke IMF untuk pembangunan ibu kota baru demi kepentingan negara.

SOURCES OF INTERNATIONAL LAW

1. *Customary International Law*

- hukum kebiasaan Internasional
- berkaitan dengan pola kebiasaan suatu negara dengan negara lain.

2. *Persistent Objector*

- Negara yang secara konsisten yang tidak mau terikat dengan kebiasaan yang kemudian dianggap sebagai hukum Internasional. Jadi negara tersebut tetap berteguh tidak mengikuti kebiasaan internasional yang ada.
- Contoh: tahun 1951 terdapat Konvensi Pengungsi yang berisikan larangan memulangkan kembali pencari suaka yang hanya ditandatangani sebagian negara.

3. *General Principles of Law*

→ basic rules whose content is very general and abstract. Hukum berlaku secara umum, semacam *pacta sunt servanda*, non retroactive

4. ***Opinio Juris Sive necessitatis***

→ suatu keyakinan bahwa suatu tindakan atau kebiasaan dilakukan sesuai dengan kewajiban hukum yang ada.

→ Contoh: suatu negara tidak akan menangkap duta besar asing tanpa persetujuan negaranya karena mereka tahu bahwa tindakan tersebut melanggar hukum internasional, ini bagian dari kebiasaan internasional mengenai kekebalan diplomatik

5. ***Erga Omnes***

→ kewajiban bagi semua negara tak terkecuali

→ contoh: setiap negara harus menjaga laut lepas, luar angkasa

6. ***Jus Cogens*** (peremptory norm)

→ fundamental

→ ada norma yang menjadi ***supreme***, tidak mungkin dikesampingkan di hukum internasional

→ contoh: norma pelarangan perbudakan, pelarangan kejahatan internasional

Istilah dalam *Law of Treaties* (Hukum Perjanjian Internasional)

1. ***Full powers***

→ surat kuasa dari negara kepada seseorang yang mewakili negara tersebut untuk negosiasi atau menandatangani perjanjian internasional.

2. ***Entry into Force*** (keberlakuan)

→ waktu ketika perjanjian internasional berlaku dan mengikat bagi para pihak pelaku

3. ***Ratification***

→ negara mengikatkan diri pada perjanjian internasional

4. ***Reservation***

→ negosiasi sebelum melakukan perjanjian, peraturan ini mengakomodasi semua kebutuhan negara. Contoh: Indonesia mereservasi konvensi genosida pada

penyelesaian sengketa yang harusnya sengketa diselesaikan langsung oleh ICJ, tetapi Indonesia mereservasi untuk non compulsory ICJ.

5. ***Declaration***

→ memperjelas posisi negara, tidak dimaksudkan untuk mengecualikan atau mengubah akibat hukum dari sebuah perjanjian. Deklarasi dibuat pada saat penyimpanan instrumen yang sesuai atau pada saat dari tanda tangan.

6. ***Amendment***

→ ada kemungkinan perjanjian internasional baru tidak mencabut perjanjian yang lama.
→ perubahan formal ketentuan perjanjian yang mempengaruhi semua pihak dalam perjanjian tertentu.

7. ***Pacta sunt servanda***

→ treaties are binding upon parties to perform their obligations in good faith

8. ***Pacta tertiis (nec nocent nec prosunt)***

→ treaty does not bind third parties unless such parties consented to be bound

9. ***Ex proprio vigore***

→ By its own strength/of its own force

→ A law or treaty may be binding *ex proprio vigore* or on its own. If an international law is not binding *ex proprio vigore* in domestic law, then legislative action needed. A treaty that requires domestic legislation is referred to as a non self executing treaty.

10. ***Rebus sic stantibus***

→ a fundamental change of circumstances where a party may withdraw or terminate the treaty.

Subjects of International Law

Legal Personality	It is principally employed to distinguish between those social entities relevant to the international legal system and those
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	excluded from it.
State	• a state is typically defined as being based on the 1933 Montevideo Convention. According to Article 1 of the Convention, the state as a person of international law should possess the following qualifications: Permanent population; Defined territory; Government; and Capacity to enter into relations with the other states.
International Organization	Organisation established by a treaty or other instrument governed by international law and possessing its own legal personality
Belligerency	the acknowledgement of a legal fact that there exists a state of hostilities between the two groups vying for power or authority.
Multinational corporation	any corporation that is registered and operates in more than one country at a time. Generally the corporation has its headquarters in one country and operates wholly or partially owned subsidiaries in other countries.

Recognition

- **Constitutive theory of recognition**
- **Declaratory theory of recognition**
- **De facto government**

As a matter of fact or reality. Recognition de facto is given to the actual government of a State

- **De jure government**

As a matter of right, by declaration from law. Recognition de jure is given to the government who has the legal right to govern a State.

- **Premature recognition**

Premature recognition in a case of secession can amount to intervention in a state's internal affairs, a violation of one of the fundamental principles of international law.

- **Effective control**

A State which have the actual control of a Territory

Jurisdiction

State Jurisdiction	State's lawful power to act and hence to its power to decide whether and, if so, how to act, whether by legislative, executive, or judicial means, or the lawful power to make and enforce rules
Territoriality principle	State jurisdiction over its territory. In addition to its land territory, the territorial sovereignty of a State extends to its internal waters, to the territorial sea adjacent to its coast, to archipelagic waters in the case of an archipelagic state, and to the air space above its territory, including internal waters, archipelagic waters, and the territorial sea
Nationality/personality principle	State jurisdiction over its nationals or citizens of, in their territory or abroad
Protective principle	sovereign can adopt a statute that criminalizes conduct that occurs outside of its borders when that conduct

	affects the sovereign itself
Universal principle	State jurisdiction over an acts or omission that is internationally defined, outside its territorial jurisdiction
International crimes	Acts or omission that is internationally recognized as crimes
Extradition	the surrender of an alleged criminal usually under the provisions of a treaty or statute by one authority (such as a state) to another having jurisdiction to try the charge

Territorial Sovereignty

- **Terra nullius**

Empty land/land of no one. Typically used to refer to a territorial category for land that is not occupied but capable of being occupied.

- **Sovereignty**

Sovereignty is the power that a country has to govern itself or another country or state.

- **Res communis (common heritage of mankind)**

The thing of the entire community. All nations had vested rights in common resources and should be shared equitably among them.

- **Sui generis**

A type of subject matter that is treated differently than other types due to some idiosyncrasy of the subject matter or a perception of the subject matter

- **Qui dominus est soli, dominus coeli et inferorum**

To whomever owns the land, it owns all the way to the heavens, and all the way to hell

- **Uti possidetis juris**

A modern principle according to which a change in sovereignty over a territory, especially due to independence following decolonization, does not ipso facto alter that territory's administrative boundaries as established by colonial authorities out of respect for succession to legal title by the new sovereign

Maritime Jurisdiction

- **Territorial Waters**

The area which extends up to 12 nautical miles from the baseline of a coastal state

- **Contiguous Zone**

The belt which extends 12 nautical miles beyond the territorial sea limit. A coastal state's control on this area is limited to prevention of actions which can infringe its customs, fiscal, and immigration laws

- **Archipelagic Waters**

Waters enclosed by the archipelagic baselines

- **Internal Waters**

Internal Waters include littoral areas such as ports, rivers, inlets and other marine spaces landward of the baseline (low-water line) where the port state has jurisdiction to enforce domestic regulations

- **Exclusive Economic Zone (EEZ)**

An area of the sea in which a sovereign state has special rights/ sovereign rights regarding the exploration and use of marine resources, including energy production from water and windhigh seas

- **International Strait**

A narrow sea passage, bordered by opposite coasts, connecting two parts of the high seas, and used for international navigation

- **Continental Shelf**

Part of the seabed over which a coastal State exercises sovereign rights with regard to the exploration and exploitation of natural resources including oil and gas deposits as well as other minerals and biological resources of the seabed.

- **Deep Seabed/The Area**

Seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction

Air and Outer Space

- **Airspace**

Area above land and sea. National airspace means an airspace above land and territorial waters which falls under the sovereignty of a State

- **International airspace**

Airspace above the High Seas

- **Air Defense Identification Zone**

Is a defined area of airspace within which civil aircraft are required to identify themselves for security reasons. These zones are established above the exclusive economic zone ('EEZ') or high seas adjacent to the coast, and over the territorial sea, internal waters, and land territory.

- **Bilateral Air Services Agreements**

Agreement between two states that is concluded to exchange rights or freedoms for commercial aviation

- **Freedom of the Air**

Freedom or rights that is enjoyed by civil aviation that is stipulated under the Convention on International Civil Aviation, International Air Services Transit Agreement, or Bilateral Air Services Agreements

- **Outer Space**

The Physical universe beyond Earth's atmosphere. part of the universe which is simultaneously beyond the airspace of planet Earth and accessible to human activity.

- **Celestial Bodies**

Moon and other celestial bodies within the Solar System

- **Space Object**

Any object that is launched or attempted to be launched into outer space, including the components, launch vehicles, and parts thereof.

- **Geostationary Orbit**

Is a circular geosynchronous orbit 35,786 kilometres (22,236 miles) in altitude above Earth's equator (42,164 kilometers in radius from Earth's center) and following the direction of Earth's rotation.

- **Satellite**

Objects being placed 'in orbit around the earth

- **Spacecraft**

Any crewed or uncrewed device that is to be used, moved, or stationed in outer space or on celestial

Self-Help and Resort to Armed Force

- **Rebellion**

The forcible opposition and resistance to the laws and process lawfully issued

- **Insurgency**

A condition of revolt against a recognized government that does not reach the proportions of an organized revolutionary government and is not recognized as belligerency

- **Jus ad bellum**

Law relating to war

- **Intervention**

The interference by a State in the internal or foreign affairs of another State

- **Declaration of War**

A formal act by which one state goes to war against another. The declaration is a performative speech act (or the signing of a document) by an authorized party of a national government, in order to create a state of war between two or more states.

- **Neutrality**

The state of not supporting or helping either side in a conflict, disagreement, etc.; impartiality

- **Use of force**

Use of armed forces of a State against another State

- **Act of aggression**

The use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations

- **Self-defense**

Act of a State to defend against a use of force or an aggression

- **Sanctions**

A threatened penalty for violation against international law

- **Blockade**

A kind of sanction that is conducted by enclosing a border of a State

Law of war

- **Combatant/non-combatant**

Combatant : Personnel of an armed forces of an adversary.

Non-combatant : civilian

- **POW**

Prisoner taken during a war, consisting of captured personnel of an adversary

- **International Committee of the Red Cross**

International Non-Governmental Organizations conducting humanitarian effort during conditions of conflict

- **Military necessity**

Armed forces can do whatever is necessary—provided always that it is not otherwise unlawful under humanitarian law—to achieve their legitimate military objectives in warfare

- **Discrimination principle**

Soldiers are legitimate targets of violence in war, whereas civilians are not

- **Proportionality principle**

Prohibition of attacks against military objectives which are “expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated

- **Indiscriminate weapon**

A weapon that cannot be directed at a military objective or whose effects cannot be limited as required by international humanitarian law

International Trade and related Economic Rules

- **National treatment**

Principle of giving others the same treatment as one's own nationals

- **Non-discrimination**

Prohibition for a country from discriminating between other countries in the trade conduct

- **Most favoured nation (MFN)**

Prohibition for a country to prefer goods or services from a State to against other States

- **Retaliation**

Final and most serious consequence a non-implementing Member faces in the WTO dispute settlement system

- **Tariff barrier**

A barrier to trade between certain countries or geographical areas which takes the form of abnormally high taxes levied by a government on imports or occasionally exports for purposes of protection, support of the balance of payments, or the raising of revenue

- **Non-tariff barrier**

A barrier to trade other than tariff barrier, such as barrier based on sanitary and phytosanitary, or technical such as standards, health, condition of goods, etc.

International Environmental Law

- **Pollution**

The presence in or introduction into the environment of a substance or thing that has harmful or poisonous effects.

- **Tragedy of the commons**

Situation where shared environmental resources are overused and exploited, and eventually depleted, posing risks to everyone involved

- **Polluter pays principle**

Commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment

- **Common but differentiated responsibilities**

All states are responsible for addressing global environmental destruction yet not equally responsible

- **Precautionary principle**

Caution, pausing and review before leaping into new innovations that may prove disastrous

- **Intergenerational equity**

The concept or idea of fairness or justice between generations.

International Law and National Law

- **Monism**

A theory or doctrine that denies the existence of a distinction or duality in some sphere, in this case, international law and national law are to be considered as of one hierarchy

- **Monism with international law primacy**

Hierarchical view of international law that puts international law as above national law

- **Monism with national law primacy**

Hierarchical view that puts national law above international law in a system

- **Dualism**

International Law and national law are of different systems and requires translation between the former to the latter for domestic application

- **Act of state doctrine**

Every sovereign State is bound to respect the act of other state, which translates to a State can not judicially decide against an act of another State

Treatment of Aliens

- **Alien**

A Foreign National

- **Dual national**

A condition of nationality where a person owns citizenship from two States

- **Exhaustion of local remedies**

The satisfaction by individuals of a requirement to resort to all available and effective local remedies that exist in a domestic legal order

- **Diplomatic protection**

Protection from a foreign State for diplomat or State agent situated in its territory in an official capacity

- **Naturalization**

Legal act or process by which a non-citizen of a country may acquire citizenship or nationality of that country

- **Jus sanguinis**

Citizenship by virtue blood, or of the parents' nationality

- **Jus soli**

Citizenship by virtue of the **place of birth**

- **Direct investment**

Acquire a controlling interest in an enterprise

- **Indirect (portfolio) investment**

A form of investment by way of the purchase of shares, share certificates, bonds, other valuable papers or a securities investment fund and by way of intermediary financial institutions and whereby the investor does not participate directly in the management of the investment activity

- **Expropriation**

The action by the state or an authority of taking property from its owner for public use or benefit

- **Nationalization**

The transfer of a major branch of industry or commerce from private to state ownership or control.

- **Creeping nationalization**

Silent takeover of a company by measures tantamount to nationalization

State Responsibility

- **Internationally wrongful act**

Act or omission conducted by State that is considered as wrongful under international law, or constitutes a breach of international obligation of the State

- **Ultra vires acts**

Acts done outside the scope of the authorized powers of the actors

- **State endorsement of action**

Actions of non-State actors that is endorsed by a State, officially or unofficially

- **Compensation**

A pecuniary remedy that is awarded to an individual who has sustained an injury in order to replace the loss caused by said injury

- **Reparation**

Reparation means recompense given to one who has suffered legal injury at the hands of another; to make amends, provide restitution, or give satisfaction or compensation for a wrong inflicted; it also refers to the thing done or given to the injured party

- **Restitution in kind**

Restitution is restoring to the rightful owner something that has been wrongfully taken; it also means returning an injured party to a condition or situation that would have obtained had no wrongful act been committed.

Peaceful Settlement of Disputes

- **Negotiation**

The term is used interchangeably with treaty, but it can also have a specific meaning as a treaty binding a broad number of nations.

- **Good Offices**

A technique of peaceful settlement of an international dispute, in which a third party, acting with the consent of the disputing states, serves as a friendly intermediary in an effort to persuade them to negotiate between themselves without necessarily offering the disputing states substantive suggestions towards achieving a settlement.

- **Conciliation**

Is a voluntary, flexible, confidential, and interest based process. The parties seek to reach an amicable dispute settlement with the assistance of the conciliator, who acts as a neutral third party.

- **Mediation**

Is a procedure in which the parties discuss their disputes with the assistance of a trained impartial third person(s) who assists them in reaching a settlement.

- **Arbitration**

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute.

- **Res Iudicata**

A matter upon which a final and binding judgment has already been passed, thereby precluding any later, conflicting judgment on the same matter.